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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-....

GEORGE ROBERT BOYKINS, et al.,
Petitioners-Plaintiffs,

v.

FAIRFIELD BOARD OF EDUCATION, et al.,
Respondents-Defendants.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Appellees in the above entitled case move to dismiss and affirm Case No. 74—on the ground that the appeal raises only questions of fact that were correctly resolved by the courts below.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I

Whether the findings of the courts below that substantial evidence supported the disciplinary action taken by the Fairfield Board of Education was clearly erroneous?

II

Whether the procedures followed in the disciplinary hearing of November 25, 1972, complied with the requirements of the Due Process Clause of the Fourteenth Amendment?

STATEMENT OF THE CASE

"The essential thrust of Petitioners' brief is to raise factual questions through the guise of procedural technicalities. In raising each issue presented on appeal, Petitioners argue that even though the District Court made no clearly erroneous findings of fact, or improperly applied any governing law applicable to the field of education, still there must be reversible error. The arguments presented are frivolous and irrelevant to the subject matter at hand. A review of the procedures followed by the Fairfield Board of Education as outlined in the Opinion of the Courts below (see Appendix A of Petitioners' brief) shows that the Fairfield Board conscientiously endeavored to follow procedural guidelines established by the Federal Courts, and did thereby comply in full with every requirement of the Due Process Clause of the Fourteenth Amendment."

Respondent Fairfield Board of Education (Fairfield) will not take detailed exception with Petitioners' Statement of the Case or Statement of the Facts, since most of the matters discussed therein are not relevant to the specific findings or the specific issues now before the Court. Instead, Respondent respectfully urges this Court's attention to the detailed recitation of the evidence of record in Judge Groom's opinion of November 27, 1972 and December 14, 1972. After treating the issues relating to curriculum and administrative responsibilities raised by Petitioners, Judge Groom concluded at page 14 as follows:

> "The Court has had many hearings in the Fairfield school case. When the hearings began there was a white ma-

jority in the school system. There is now a black majority and this majority is growing with every term and with ever Court order. The number of students in the system is dropping every year with the consequent loss of revenue. The cooperation between the races apparently has disappeared. *Picayunish claims are being made on the one hand and vigorously contested on the other.* If this system is to survive this continued litigation must come to an end. *Many of the black students appear to have overlooked the point that the object of attending Fairfield High is to obtain an education and not merely to maintain a point of which an issue may be made. Throughout the hearing, the lack of discipline on the part of black students has been evident. This litigation has been enough to 'tax the patience of a Job'. This Court has tried to demonstrate its patience, which has not yet been exhausted but it frankly is somewhat frayed."* (Emphasis supplied.)

Similarly, after reviewing the record of the disciplinary hearing which led to the suspension and expulsion of several students, Judge Grooms, in his opinion of December 14, 1972, reached the following conclusion at page 4:

"In view of what had occurred at the school prior to November 10, 1972, it was essential that students go to their classes and remain in their classes rather than milling around in the halls and continuing the demonstration. It is not logical nor does it make sense that the teachers would excuse the students from the classes as several of them have testified. The demonstrations attending the boycott could hardly be prevented if the students were excused from their classes or if they walked out deliberately as the evidence indicates these students did.

This Court's order of November 9, 1972, giving these students the right to return to their classes was conditioned upon their abandonment of the boycott. Not only did the

action which the evidence shows that they took contravene the instructions of the school authorities, *but it flew in the face of this Court's order of November 9, 1972.* In view of those demonstrations the school authorities felt it necessary to excuse school on November 10 and this was done and another day was lost. The maintenance of discipline was a matter of first concern if classes were to continue. The students who were disciplined by this expulsion or suspension flaunted the fundamental principles of discipline which obviously were inherent in the situation existing on the morning of November 10, 1972, namely, that they should go to and remain in their classes and not become involved in further demonstrations." . . .

. . . The hearing that was held by the Board was an extensive one and there was much evidence. The Court does not feel that it was called on to analyze all of the evidence. It simply states that within the ambit of its prerogative respecting the review that the students now complaining were afforded procedural due process and the expulsion and suspension were merited under the evidence."

ARGUMENT

I

Where Substantial Evidence Supported Disciplinary Action Taken by a Duly Constituted Bi-Racial School Board, the District Court Was Not "Clearly Erroneous" in Accepting Their Findings of Fact.

In *Ferguson v. Thomas*, 430 F. 2d 852 (5th Cir. 1970), this Court at page 859 held that fact findings by academic agencies "when reached by correct procedures and supported by substantial evidence, are entitled to great weight, and the Court should never lightly substitute its judgment for that of the Board." See also *Duke v. North Texas State University*, 469 F. 2d 829, 838 (5th Cir. 1973); *Russo v. Central School District No. 1, Town of Rush, N. Y.*, 469 F. 2d 623, 628 (2nd Cir. 1972); *Linwood v. Board of Education, City of Peoria, School District No. 150, Illinois*, 463 F. 2d 763, 770 (7th Cir. 1972); *Sill v. Pennsylvania State University*, 462 F. 2d 463, 469 (3rd Cir. 1972).

In his opinion of December 14, 1972, Judge Grooms reviewed the evidence concerning (1) Vanessa Arrington, (2) Beverly Claiborne, (3) Linda Meadows, (4) Clarence Young, (5) Jacques Guest, (6) Darlene Phelps, (7) Kathy Scott, (8) John Hall and (9) Beverly Law; and based on that review of the record concluded at page 4 that substantial evidence supported the administrative action taken.

Petitioners dispute the conclusion reached by Judge Grooms, not on the grounds that his decision was "clearly erroneous" under the standards of Rule 52 F.R. Civ. P., but for the reasons that *alternative remedies* were apparently not considered by the Board in reaching their decision as to what punishment was proper.

Petitioners, in discussing the evidence of each student, concede that specific charges of misconduct were made and substantiated by the investigative report of Mr. Hershall Turner, principal of the Fairfield High School. It is respectfully submitted that an argument on appeal which merely suggests alternative remedies while not disputing the substantial evidence of the record does not sustain the burden of proof necessary to show reversible error. *Dixon v. Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961). The facts presented to support the charges against each student were meticulously developed, carefully documented and openly presented by the principal of the high school. In each case, full disclosure was made to the student, and each of the 21 students was given full opportunity to dispute or deny the factual allegations made. Based on the testimony given, the Board carefully measured the punishment appropriate under the circumstances in each case. In this there was no error. *Linwood v. Board of Education, City of Peoria, School District No. 150, Illinois*, 463 F. 2d 763, 770 (7th Cir. 1972).

II

Where Students Charged With Academic Misconduct Are Given (1) Fair Notice of a Disciplinary Hearing, (2) Specific Statement of the Charges Against Them, (3) a Full Hearing With the Right to Examine and Present Evidence With the Assistance of Counsel, the Requirements of Due Process Are Satisfied.

The procedure followed in the disciplinary hearing of this case was discussed by counsel on both sides, explained to all students collectively, and to each student individually as (s)he was called before the Board members. The procedure followed was set forth at the beginning of the hearing:

"(Off-Record Discussion)

"Mr. Sweeney: I wanted to read a short statement from the leading school disciplinary case which I have always found instructive and its edict of the Court system followed since 1960, *Dixon v. Alabama State Board of Education.* 'School officials and officials should be careful in receiving evidence against the students. They should weigh it, determine whether it comes from a source tainted with prejudice, determine the likelihood by all surrounding circumstances as to who is right, and then act upon it as jurors with calmness, consideration, and fair minds. When they have done this and reached a conclusion, they have done all that the laws require of them to do. We think that students should be informed as to the nature of the charges, as well as the names of at least the principal witnesses against him when requested, and given a fair opportunity to make his defense. He cannot claim the privilege of cross-examination as a matter of right. The testimony against him may be oral or written, not necessarily under oath, but he should be advised as to the nature as well as to the persons who have accused him.'

"Let me ask you if this procedure will be agreeable. We will call each student from outside into the conference room with his parent or guardian. We will explain to the child what he has been charged with, and ask him if it is clear in his mind what school rules he has violated. If he has no questions, we will then present the evidence against the child to support the accusations. Having done that, we will ask the student if he has anything to say to contradict the charges that have been made against him, or the evidence to support charges that have been made against him. After that we will—I think the Board should ask the School Administrator that is presenting the evidence any—and the child—any questions that you think are relevant in order to resolve any conflict. We're going to accord Mr.

Newton the privilege of cross-examination. It is not a right that he can insist on, but we are showing him that courtesy. After the Board, after the school and the child have presented whatever evidence they want, then we will excuse the child and go on to the next student. Is that an agreeable process?" (Tr. 6-8)

In adopting the procedure followed, the Fairfield Board of Education conformed to the standards established by this Court in *Dixon v. Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961) and subsequently followed by courts throughout the Federal system. See *Pervis v. LaMarque Independent School System*, 466 F. 2d 1054, 1058 (5th Cir. 1972); *Duke v. North Texas State University*, 469 F. 2d 829 (5th Cir. 1973); *Williams v. Dade County School Board*, 441 F. 2d 299 (5th Cir. 1971); *Givens v. Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972); *Davis v. Ann Arbor Public School*, 313 F. Supp. 1217 (E.D. Michigan, 1970); *Esteban v. Central Missouri State College*, 277 F. Supp. 649 (W.D. Mo. 1967), affirmed 415 F. 2d 1077, Blackmun, J. (8th Cir. 1969); *"General Order On Judicial Standards of Procedure In Substance In Review Of Student Discipline,"* 45 F.R.D. 133 (1968).

While the Supreme Court has written no inflexible blueprint for all school disciplinary hearings, the essential procedural safeguards have been stated to include the following, "Three minimal requirements apply in cases of severe discipline, growing out of fundamental conceptions of fairness implicit in the procedural due process. *First*, the student should be given adequate notice in writing of the specific ground or grounds and the nature of the evidence on which the disciplinary proceedings are based. *Second*, the student should be given an opportunity for a hearing in which the disciplinary authority provides a fair opportunity for hearing of the student's position, explanation and evidence. The *third* requirement is that no disciplinary action be taken on grounds which are not supported by any substantial evidence."

45 F.R.D. 133, 135 (1968). See also *Givens v. Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972); *Davis v. Ann Arbor Public School System*, 313 F. Supp. 1217-1225 (E.D. Mich. 1970); *Scoggin v. Lincoln University*, 291 F. Supp. 161, 171 (W.D. Mo. 1968).

Petitioners do not question the general features of the procedure followed by the Fairfield Board, for the reason that the Board made every effort to conform to the requirements established by this Court. Petitioners question only that aspect of the hearing which related to the presentation of the evidence.

The principal of the Fairfield High School, Mr. Hershell Turner, investigated each charge brought and then presented to the Board the result of his investigation. In several instances, the report involved incidents witnessed by Mr. Turner, himself, and in others, the reports referred to attendance records and reports given to Mr. Turner by the teachers involved. Petitioners contend that none of this information was admissible under strict rules of evidence. This position is urged notwithstanding Mr. Turner's personal knowledge of the facts presented, and notwithstanding the fact that he was subjected to extensive cross-examination by counsel for the students in every case. In other words, Petitioners challenged this procedure not on the substantive grounds of *fairness* since they were allowed to develop fully the basis for the charges, but on the technical evidentiary grounds of hearsay.

In *Davis v. Ann Arbor Public Schools*, 313 F. Supp. 1217 (E.D. Mich. 1970), the Court rejected this same type of technical objection; at page 1227, the Court observed:

> "Plaintiff attacks, also, the proceedings before the Board of Education. He complains that there was no 'dialogue', as he puts it, before the Board, with respect to a list of charges against him. What the Plaintiff apparently envisions as required by administrative due process is some-

thing similar to an indictment, containing various counts, concerning which he will be tried by the Board of Education, with cross-examination of witnesses and the other attributes of judicial proceedings.

"The plaintiff misconceives the law. The opinion in the case of Dixon v. Alabama State Board of Education, *supra*, among others, takes care to point out the indisputable fact that 'A full dress judicial hearing, with the right to cross-examine witnesses, is not required for due process. Such a procedure, as well as the other panoply of judicial proceedings, such as discovery, challenges to the competency of the hearing officers, and the other requirements of either a civil or a criminal trial, would be totally at variance with the student-school relationship, would impose intolerable administrative burdens on the scholastic community, and would be disruptive of the very function the school is created to accomplish, namely, the impartation and acquisition of knowledge in a calm, orderly, and reflective atmosphere."

Petitioners were given the opportunity to develop the extent of Mr. Turner's investigation and knowledge concerning each charge. Petitioners were given the opportunity to rebut this testimony since each student listened to the charges and supporting information presented against them by Mr. Turner. Thus, Petitioners were given every right required by the Fourteenth Amendment as interpreted by the Courts.

CONCLUSION

For the reasons previously stated, the Order of the Court below should be affirmed. This appeal presents no substantial question for review or reconsideration.

Respectfully submitted

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Certificate of Service

I hereby certify that copies of the above and foregoing Brief have been served upon counsels for Appellants via first class mail, postage prepaid, this 21st day of May, 1973.

Original Signed by

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